

The CARES Act and Other Key Topics for Employers Responding to the COVID-19 Pandemic

Please note: The program will begin promptly at 2:00 p.m. If you experience difficulties with the audio portion of the program, there is an audio tab in the upper right corner of the webinar program. Click on that tab, and you will be given instructions for dialing in by phone to hear the audio.

April 7, 2020

Our Blogs - COVID-19 Response Page

- <https://www.pullcom.com/newsroom-publications-FOCUS-Responding-to-COVID-19>

The screenshot shows the Pullman & Comley website's COVID-19 response page. The header includes the firm's logo and navigation links: ABOUT, LEGAL SERVICES, TEAM, INCLUSION, NEWS & INSIGHTS, CAREERS, and CONTACT. The main content area features a large image of a coronavirus particle. A text box on the right contains the following text:

Responding to COVID-19 (coronavirus)

Pullman & Comley attorneys are actively monitoring the legal implications of COVID-19 for businesses, municipalities, educational institutions and other organizations. Please visit our FOCUS page for the latest advisories.

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Below the main content, there are three smaller articles:

- WEBINAR** 03.27.2020
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by Karen Jeffers
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Small And Mid-Size Businesses Should be Able to Swiftly Recover the Cost of Providing Coronavirus Related Paid Leave Under the Families First Coronavirus Response Act
by Melinda Kaufmann

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Alerts, commentary, and insights from the attorneys of Pullman & Comley's Labor, Employment and Employee Benefits Law practice on such workplace topics as labor and

What Small Businesses Need to Know About Financial Relief in the Wake of the CARES Act

Brion J. Kirsch

April 7, 2020

Highlights of the Coronavirus, Aid, Relief, and Economic Security (CARES) Act

- Tax relief for individuals and small businesses (certain tax payments can be deferred for up to 2 years) and direct cash payments to qualified individuals
- Approx. \$850 Billion in various lending programs, guaranteed loans and investments
- Increases in unemployment compensation and broadening the classification of persons eligible to receive
- Many more such as funding public health programs, hospitals and medical providers, protections against foreclosures and evictions as well as relief for delayed payments
- Various changes to the bankruptcy laws among which are some that are designed to allow more small business easier access to bankruptcy protections and streamlined bankruptcy processes.

Paycheck Protection Program

- The most robust portion of the CARES Act is the “Paycheck Protection Program” (PPP)
- The program is an expansion of the existing SBA 7(a) loan program and an expansion of the current EIDL program
- Allocated \$349 Billion for loans to be made under this program
- Loans made before June 30, 2020 under this program are 100% guaranteed by the SBA
- Broadened definitions for eligibility from the 7(a) loan program
- Intended to provide 8 weeks of payroll and certain operating expenses to businesses to keep people employed

WHO IS ELIGIBLE

First question, who is an eligible borrower under PPP:

- Businesses (including sole proprietorships, self-employed and independent contractors), start-ups, veteran organizations, 501(c)(3) non-profits and Tribal businesses:
 - a small business concern or business having 500 or fewer employees or that meet a larger applicable size standard for the industry as established by the SBA (multiple locations each treated and counted separately as long as business is “accommodation and food services – ie NAICS code beginning with “72”)
 - that were in existence and operational on February 15, 2020
- For purposes of PPP the SBA’s “affiliation rules” have been waived for hotels, motels, restaurants and a select list of other businesses
- Borrower’s do not have to provide that they cannot get credit elsewhere in order to be eligible for a PPP loan
- Foreign ownership question appears on application and may disqualify a business

HOW MUCH CAN YOU BORROW

The maximum loan amount will be equal to the lesser of:

- \$10,000,000; and
- The sum of:
 - 2.5x the average total monthly payments for payroll costs incurred during the 1-year period prior to the date of the loan (different rules for seasonal businesses), plus
 - The outstanding balance of an EIDL loan made on or after January 31, 2020
- If borrower was not in business between February 15, 2019 and June 30, 2019, 2.5x the average total monthly payments for payroll costs between January 1, 2020 and February 29, 2020 plus the outstanding balance of any EIDL loan, subject to \$10,000,000 maximum
- What does “payroll costs” means:
 - For employees, the sum of wages (up to \$100,000/year/employee) plus many fringe benefits such as paid sick and vacation time, retirement benefits, health care benefits as well as state or local taxes assessed against employee but paid by business (excluding federal employment taxes). \$100,000 limitation only applies to cash compensation
 - For sole proprietors and independent contractors, any wage or other income not to exceed \$100,000 in 1 year
 - Payroll costs must be for employee whose principal place of resident is within the United States
 - Other exclusions apply

OTHER LOAN TERMS

- Interest rate is 1% (this is set by the interim final rule and applies to all lenders)
- Can be used for:
 - Payroll costs (up to \$100,000/employee/year)
 - Group health care benefits (including insurance premiums)
 - Paid sick, medical or family leave (excluding sick and family leave covered under the Families First Coronavirus Response Act)
 - Payments of interest on any mortgage obligation (excluding voluntary prepayment)
 - Rent
 - Utilities
 - Interest on any other debt obligations that were incurred before February 15, 2020
- SBA application fees are waived (lenders still receive a fee from the SBA but are prohibited from charging additional fees to the borrower)
- Payments are deferred for 6 months; however, interest will accrue during the deferral period
- No collateral or personal guaranty requirements
- Loan term of 2 years (set by the interim final rule)

LOAN FORGIVENESS

- All PPP loans are eligible to be forgiven
- Amount of forgiveness equal to the sum of the following costs incurred and payments made during the 8 week period from the date the loan is made:
 - Payroll costs (subject to same limitations as before, \$100,000/employee/year)
 - Interest on covered mortgage obligation (excluding voluntary prepayments)
 - Rent
 - Utilities
 - At least 75% of the PPP loan has to actually have been used for payroll costs
- Forgiveness amount cannot exceed original loan amount
- Forgiveness will be reduced by percentage equal to average number of full time employees between Feb. 15, 2020 and June 30, 2020 divided by either average number of full time employees between Feb. 15, 2019 and June 30, 2019, or average number of full time employees between Jan. 1, 2020 and Feb. 29, 2020
- Forgiveness will be reduced proportionately if total salary or wages of any employee not making more than \$100,000/year during any pay period in 2019, for any salary reduction in excess of 25%
- Exemption for re-hires subject to certain limitations

WHAT LENDERS NEED TO KNOW

- All lender's with "delegated authority" from SBA are able to make PPP loans
- Lender's without "delegated authority" may be eligible to make PPP loans and receive full benefits of SBA guaranty and forgiveness purchase if meet certain criteria
- 100% guaranty of eligible loans by SBA through Dec. 31, 2020
 - Starting Jan. 1, 2021, the guarantee will be 75% for loans > \$150,000 and 85% for loans =< \$150,000
- If the loan is forgiven, the SBA pay the lender the amount forgiven within 90 days of all or a portion of the PPP forgiven
- May be purchased in advance by SBA starting week 7
- Risk Rating under Risk Based Capital Requirements is 0%

Executive Order 7S – Tax Deadlines and Collection Efforts

- Mandates that Towns select either deferment program or low interest rate program – or both
- Currently only applies to municipalities, towns and boroughs. Will probably expand to include special tax districts, special service districts, and C-PACE benefit assessments
- Eligibility for the deferment program will be limited to taxpayers who have lost at least 20% of their income due to unemployment or work reduction as a result of COVID-19, and that landlords will only be eligible if either their property has suffered significant revenue decline (for the deferment program) or they'll postpone or reduce their tenants' rent by 25% or one month for 90 days (for both programs). Towns have the option to expand eligibility
- Deferment Program – defer tax payments due between Mar. 10, 2020 and July 1, 2020 for 90 days from due date (net effect 60 day extension of grace period)
- Low Income Program – payments due between Mar. 10, 2020 and July 1, 2020 have same due date but accrue 3%/annum for first 60 days as opposed to 18%/annum – no eligibility requirement; applies to all taxpayers in Town

What Employers Need to Know About the CARES Act and Recently Issued Employment Guidance

Megan Y. Carannante

April 7, 2020

Summary of New Developments

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act passed into law and guidance issued.
- The U.S. Department of Labor issued regulations and continues to post revised guidance answering many burning questions on how the Families First Coronavirus Response Act (“FFCRA”) works.
- The U.S. Department of Labor provided poster that must be distributed / displayed in the workplace on the FFCRA.
- The CT Department of Labor continues to post updated FAQs for workers and employers answering many questions about unemployment, reduction in hours, etc.

CARES Act –Pandemic Unemployment Assistance “PUA”

- Provides for unemployment for self employed workers, independent contractors, gig workers and workers with a limited work history through December 31, 2020
 - Must be unemployed for one of COVID 19 related reasons to qualify:
 - (1) Diagnosed with COVID-19 or experiencing symptoms
 - (2) Member of household diagnosed with COVID-19 or experiencing symptoms
 - (3) Providing care for family member or household member diagnosed with COVID-19
 - (4) Caring for individual whose school or other facility closed because of COVID-19
 - (5) Unable to reach place of employment because of quarantine
 - (6) Scheduled to commence employment but unable to reach job because of pandemic
 - (7) Individual has become the breadwinner because H.O.H. died from COVID-19
 - (8) Individual had to quit job as a direct result of COVID-19
 - (9) Individual’s place of employment is closed as a direct result of COVID-19

CARES Act- Additional \$600 per week in Federal Unemployment

- Provides for an *additional federally funded* emergency increase of \$600 per week payment—termed by the legislation as “Federal Pandemic Unemployment Compensation”—paid to each recipient of UI or PUA for up to 4 months on top of their state unemployment benefit.

CARES Act- Expansion of Length of Time People Can Collect UI

- Provides for an additional 13 weeks of unemployment benefits through December 31, 2020 (typically 26 weeks max in CT)

Other Notable CARES Act Provisions

- Allocates funding to pay the cost of the first week of UI through December 31, 2020, for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.
- Provides 100% funding of “short-time compensation” programs through December 31, 2020, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a prorated unemployment benefit. (The CT Shared Work Program)

Employment Strings on PPP loan forgiveness

- If apply for Paycheck Protection Program (PPP) Loan provided for by the CARES Act, you need to be aware that forgiveness of the loan is subject to reduction if your business terminates employees or reduces their wages more than 25% during the forgiveness period.
- Act provides for safe harbor if made personnel changes between February 15th and April 26th and rehire / increase hours by June 30, 2020.

Middlesex Chamber of Commerce

The CARES ACT in Bite Size Portions

Robert C. Hinton

April 7, 2020

The Families First Response Act (FFCRA): What You Need to Know?

- The Families First Coronavirus Response Act (FFCRA) requires certain employers to provide their employees with **emergency paid sick leave** (“**EPSL**”) and **expanded family and medical leave** (“**EFML**”) for specified reasons related to COVID-19.
- These provisions will apply from April 1, 2020 through December 31, 2020.

ELIGIBLE EMPLOYEES

- In general, employees of private sector employers with fewer than 500 employees, and certain public sector employers, are eligible for up to two weeks of fully or partially **EPSL** for COVID-19 related reasons (see below).
- *Employees who have been employed for at least 30 days prior to their leave request may be eligible for up to an additional 10 weeks of partially paid **EFML** for reason #5 below.*

FFCRA: Qualifying Reasons for Leave Related to COVID-19

- An employee is entitled to take leave related to COVID-19 if the employee is unable to work, including unable to telework, because the employee:
 1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 2. has been advised by a health care provider to self-quarantine related to COVID-19;
 3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
 4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
 5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons;
or
 6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

- **Generally, employers covered under the Act must provide employees:**
- Up to 2 weeks of **EPSL** based on the higher of their regular rate of pay, or the applicable state or Federal minimum wage, paid at:
 - **100%** for qualifying reasons #1-3 above [ordered to quarantine or isolation, advised to quarantine, or is experiencing symptoms and seeking medical care], up to \$511 daily and \$5,110 total;
 - **2/3** for qualifying reasons #4 and 6 above [caring for individual or experiencing similar condition], up to \$200 daily and \$2,000 total; and
 - Up to 12 weeks of **EPSL** and **EFML** paid at $\frac{2}{3}$ for qualifying reason #5 above [caring for child whose school or daycare is closed], for up to \$200 daily and \$10,000 total (\$12,000 total when adding the \$2000 under EPSL and the \$10,000 from EFML).
- A part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period.

- Eligible employees may take up to 12 weeks of paid, job-protected leave when they are unable to work (or telework) due to a need for leave to care for their son or daughter under 18 years of age, if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, if either is due to an emergency with respect to COVID-19 declared by a Federal, State, or local authority.
- Compensation for the paid leave is capped at \$200 per day, and \$10,000 in total.
- The first 10 days of this leave can be unpaid, although an employee may elect to substitute accrued vacation leave, personal leave, or medical or sick leave for this initial unpaid leave period if they desire.
- After the initial 10-day period, the employer must pay the employee for any additional qualifying leave taken under the Act at a rate of not less than two-thirds of the employee's "regular rate of pay" (as determined under Fair Labor Standards Act) for an amount of hours the employee would otherwise normally be scheduled to work.

FFCRA – Emergency FMLA: Job Restoration

- Employers with fewer than 25 employees are excluded from the obligation to return an employee taking leave under this Act to the same or equivalent position upon the return to work if:
 - 1. the employee’s position no longer exists following the leave due to economic conditions or other changes in operating conditions of the employer which both: i) affect the position; and ii) were caused by an emergency with respect to COVID–19 declared by a Federal, State, or local authority; and
 - 2. The employer made reasonable efforts to restore the employee to a position equivalent to the position the employee held when the leave commenced, with equivalent employment benefits, pay, and other terms and conditions of employment; and
 - 3. the employer continues to make reasonable efforts to contact the employee if such an equivalent position becomes available within the 1-year period beginning the date the leave concluded, or a date 12 weeks after the start of the employee’s leave, whichever is earlier.

- Failure to provide paid sick leave under the Act is tantamount to failing to pay minimum wages under the Fair Labor Standards Act.
 - Can result in civil penalties, injunctive relief, and damages including unpaid wages, liquidated damages (generally referred to as “double damages”), attorneys’ fees and costs, as well as potential criminal liability, including fines up to \$10,000 and imprisonment of up to six months.
- Similarly, discharging, disciplining, or in any other manner discriminating against employees in violation of the Act is tantamount to similar violations under the FLSA
 - In addition to the civil and criminal liability discussed above, can entitle an impacted employee to reinstatement, promotion, and the payment of wages lost, and an additional equal amount as liquidated damages.

FFCRA: Notice Posting Requirements

- Employers must post a Secretary-of-Labor-approved notice in a conspicuous place on the premises where notices to employees are customarily posted.
- Employees who are teleworking must received notice by mail, email, and/or posting on intranet or company website.
- The notice must be posted by April 1, 2020.

- The bill gives the Labor Department the authority to let small businesses with fewer than 50 workers to apply to opt out if the sick leave payments “would jeopardize the viability of the business as a going concern” -- in other words, if paying the benefit would help drive it out of business.
- The DOL has issued guidance on analyzing the employer’s qualification for this opt out provision.

COVID-19 WHAT EMPLOYERS NEED TO DO

What should you do when an employee tests positive for COVID-19:

- Send employee and all employees who worked closely with the employee home for 14-day quarantine period
- Before doing this, ask employees to identify all individuals who worked in close proximity (three to six feet) with them in the past 14 days
- Follow CDC Guidance and Recommendations

Thank you for joining us.

Please visit our website at <https://www.pullcom.com/newsroom-publications-FOCUS-Responding-to-COVID-19> for further information.

Megan Y. Carannante, Tel: 860.424.4325, Email: mcarannante@pullcom.com

Robert C. Hinton, Tel: 860.424.4346, Email: rhinton@pullcom.com

Lee Hoffman, Tel: 860.424.4315, Email: lhoffman@pullcom.com

Brion Kirsch, Tel: 860.424.4349, Email: bkirsch@pullcom.com

State of Connecticut's Coronavirus Website

<https://portal.ct.gov/coronavirus>



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